IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5105 of 2007()

CRIME NO.218/07 OF TOWN SOUTH POLICE STATION, PALAKKAD
CRMP.2698/2007 of I ADDL. DISTRICT COURT, PALAKKAD

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PETITIONERS/ACCUSED NOS.10 & 15.

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1. JITHESH.M., AGED 31 YEARS,
S/O. LATE RAJENDRAN, MOZHIKUNNATH MANA,
MELE PATTAMBI, OTTAPALAK,PALAKKAD DISTRICT.

2. K.P.M.SHERIFF, AGED 28 YEARS,
S/O. PRIYAKUTTY HAJI,KURIANGOTTU VALAPPIL,
KOOTTANADU POST,OTTAPALAM TALUK,
PALAKKAD DISTRICT.

3. S.SRINATH, AGED 25 YEARS,S/O.SAHADEVAN,
GEETHANJALI,PALLATHAMPULLY, THATHAMANGALAM POST,
CHITTUR TALUK, PALAKKAD DISTRICT.

4. S.M.NOUSHAD, AGED 29 YEARS,
S/O. SYED MOHAMMED,S.M.HOUSE, HUDA NAGAR,
NOORANI POST, PLALAKKAD DISTRICT.

5. C.V.SATHEESH, AGED 33 YEARS,
S/O. VELAYUDHAN NAIR,SUDHI NIVAS, THAREKKADU
PARAMBU, AMBIKAPURAM POST,
PALAKKAD DISTRICT.

6. E.SUBHASH, AGED 33 YEARS, S/O. BALAN,
AMBALAPPURAM HOUSE, WEST YAKKARA,
PALAKKAD TALUK & DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE,TOWN SOUTH STATION,
PALAKKAD DISTRICT,REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5105 of 2007

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Dated this the 22nd day of August, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 10 to 15. They have been brought on the array of parties subsequently by a report. The crux of the allegations is that the petitioners, along with others, were members of an unlawful assembly of persons, who, in prosecution of their common object, trespassed into a lottery office run by a private individual and indulged in wanton acts of mischief and violence. Accused 1 to 9 were arrested, but the petitioners were not arrested at the scene. Their names are not shown in the F.I.R. In the course of investigation their identity was ascertained and they were arrayed as accused. The only non-bailable offence alleged is one under Section 452 I.P.C.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The fact that they were not arrested at the scene is of great significance, submits the counsel. He further submits that this crime is connected with Crime No.217 of 2007, which also took place on the same day. In that crime the

petitioners have been granted anticipatory bail by the Sessions Judge. Subject to appropriate conditions, the petitioners may be granted anticipatory bail in this crime also, submits the counsel.

3. The learned Prosecutor opposes the application. He submits that the learned Sessions Judge has passed Annex.B order adequately protecting the interests of the petitioners. There is no merit in the present application for anticipatory bail. It is a fact that wanton acts of mischief and violence did take place in the premises and at this stage there is no reason to doubt the complicity of the petitioners, submits the learned Prosecutor.

4. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. I am certainly of the opinion that there are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned

Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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